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OFFICE OF PETITIONS

In re Application of :
SOLIMAN, SAMIR S. :
Application No. 09/965,341 : DECISION ON PETITION
Filed: 09/27/2001 :
Attorney Docket No. 010427 :

This is a decision on the petition under 37 CFR 1.181, filed May 16, 2005, to withdraw the holding of abandonment. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The undersigned immediately reviewed the petition and rendered the following decision upon its receipt. The Office sincerely apologizes for any inconvenience.

The application became abandoned for failure to respond timely to the final Office action, mailed on February 23, 2004, which set a three-month shortened statutory period to respond. In the apparent absence of a timely filed response, the application was held abandoned on May 24, 2004. A Notice of Abandonment was mailed on November 30, 2004.

Petitioner asserts that he timely submitted a response to the final Office action via facsimile transmission on April 20, 2004. In support of the assertion, petitioner supplied copies of the reply in the form of a Request for Continued Examination (RCE) Transmittal, an authorization to charge the RCE fee, and an amendment. The RCE included a certificate of facsimile transmission under 37 CFR 1.8 dated April 20, 2004, signed by Sheryl Schoen. Additionally, petitioner provided a Statement under 37 CFR 1.8(b)(3) by Sheryl Schoen, and a copy of the USPTO's Auto-Reply Facsimile Transmission, acknowledging receipt of 12 pages (including the cover page) in USPTO on April 20, 2004.

37 CFR 1.8(b) states that in the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received by the U.S. Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement, which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement. If the correspondence was transmitted via the Office electronic filing system, a copy of an acknowledgment receipt generated by the Office electronic filing system confirming submission may be used to support this statement.

In view of the above, the required reply is considered timely filed pursuant to 37 CFR 1.8(b). Accordingly, the petition under 37 CFR 1.181 is granted and the holding of abandonment is withdrawn. The application will be restored to pending status. No petition fee is necessary.

This matter is being referred to Technology Center Art Unit 2682 for review of the RCE and the submission under 37 CFR 1.114 resubmitted with the petition on May 16, 2005.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
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